

### **REMARKS/ARGUMENTS**

Claims 1-10, 12-37, 39-48, 52-73 and 75-107 are pending in the present application. Claims 1, 22-24, 27, 28, 30, 32, 34, 37, 39, 58-60, 63, 64, 66, 68, 70, 73, 75, 92-94, 97, 98, 100, 102, 104 and 107 have been amended by this Amendment.

### **Claim Rejections under 35 USC § 101**

Claims 1-10, 12-37, 39-48, 52-73 and 75-107 stand rejected under 35 USC § 101 because the claimed invention is directed to non-statutory subject matter. The Examiner asserts in the Advisory Action mailed October 21, 2009 that the steps of receiving in the exchange system and determining, creating, routing and tracking at the exchange system do not show that the steps are actually performed by the exchange system, and that the steps may be performed by a human at the exchange system. The claims have been amended to expressly denote these steps are performed by the exchange system. The claimed method is therefore tied to a particular machine that is not a software system alone: the hardware exchange system. *In re Bilski* specifically requires a particular machine and the hardware exchange system qualifies as such. In particular, paragraphs [0027] to [0029] of Applicants' published application explain that the exchange system may be any number of computer system hardware configurations including a processor, memory, and modules for performing the functions as claimed. Accordingly, Applicants now request that the rejection under 35 USC § 101 be withdrawn.

### **Claim Rejections under 35 USC 103**

Claims 1-10, 12-37, 39-48, 52-73 and 75-107 stand rejected under 35 USC § 103(a) as unpatentable over Coyle (U.S. Pat. No. 6,269,157) in view of Gros et al. (U.S. Pub. No. 2002/0004788, hereinafter "Gros"). Applicants traverse this rejection.

Applicants' independent claim 1 has been amended to recite, *inter alia*, "tracking, by the exchange system, bandwidth utilization for the supplier on the supplier list; checking, by the exchange system, whether the received incentive data provided by the supplier on the supplier list in said step of receiving offers data services extending beyond the available bandwidth of the supplier on the supplier list by reviewing the received incentive data and the tracked bandwidth utilization, and, in determining the selected supplier, ensuring that the supplier on the supplier list does not oversell the available bandwidth." Independent claims 39 and 75 have been amended to include features akin to those of independent claim 1. Support for the amendments to the claims is found at least in paragraph [0087] of Applicants' published application. The asserted combination applied by the Examiner fails to disclose, teach or suggest the above recited features of Applicants' independent claim 1.

The Examiner already acknowledges at page 5 of the Office Action that Coyle fails to disclose tracking bandwidth utilization for a supplier to ensure that the supplier does not provide further incentive data for data services beyond the available bandwidth of the selected supplier. Instead, the Examiner relies on Gros as disclosing these limitations. In particular, the Examiner asserts in the Advisory Action that Gros discloses in paragraphs [0038], [0043], and [0083]-[0085] that the pooling point administrator monitors the quality of service of delivered bandwidth to ensure that it meets the contracted for terms and, thus, discloses these limitations.

Applicants disagree; however, as previously noted, the claims have been amended to clarify these limitations for the Examiner.

With regard to the claims, as amended, Gros fails to disclose, teach or suggest “checking, by the exchange system, whether the received incentive data provided by the supplier on the supplier list in said step of receiving offers data services extending beyond the available bandwidth of the supplier on the supplier list by reviewing the received incentive data and the tracked bandwidth utilization, and, in determining the selected supplier, ensuring that the supplier on the supplier list does not oversell the available bandwidth”, as recited by Applicants’ amended claim 1.

Gros is directed to a method of pooling bandwidth between first and second pooling points in a communication system. Tradable bandwidth segments are made available from the pooled bandwidth. A seller then delivers to a buyer bandwidth between the first and second pooling points pursuant to agreed upon terms (See Abstract of Gros). Paragraph [0038] of Gros discloses that a pooling point administrator 304 is responsible for monitoring the quality of service of delivered bandwidth to ensure that it meets the contracted for terms. Paragraph [0043] of Gros explains that bandwidth traders may have a right to recover liquidated damages from their respective counterparties in the event that the making or taking delivery of bandwidth does not meet prescribed quality of service standards agreed to by the counterparties. Thus, Gros describes monitoring only bandwidth that has already been delivered against previously contracted for terms to ensure that the previously contracted for terms were met. Gros fails to disclose, teach or suggest checking delivery terms or bandwidth segments that have not yet been made available and the bandwidth utilization of the seller promising the bandwidth segments and then preventing the seller from making available the bandwidth segments or terms if they are

beyond the available bandwidth of the supplier. That is, Gros does not check the seller's available bandwidth to ensure that the seller's incentive data for bandwidth segments does not extend beyond what the seller can provide in the future. On the contrary, as is clear from paragraph [0043] of Gros, if incentive data for data services beyond the available bandwidth of a seller were provided by the seller in Gros, Gros would allow the incentive data/bandwidth segments to be made available, terms to be contracted for with a buyer, and merely determine after delivery of the bandwidth that the provided bandwidth did not meet the prescribed for quality of service standards agreed to by the seller and the buyer. Thus, Gros merely determines after the fact that delivered bandwidth did not meet contracted for terms or quality standards. Gros does not check bandwidth segments before they are delivered, let alone before they are made available so that, as claimed, when determining a supplier, the determination ensures that the supplier does not oversell its bandwidth. Thus, Gros fails to ensure that sellers do not make available or trade bandwidth segments or terms that are beyond the seller's available bandwidth. In contrast, as required by Applicants' claim 1, the exchange system ensures that incentive data does not offer data services extending beyond the available bandwidth of the supplier in determining, in the first instance, which supplier should be the selected supplier for routing data.

In particular, Gros describes in paragraphs [0083] to [0085] that the delivered bandwidth may be monitored to ensure that the bandwidth is delivered according to the agreed upon terms. Gros further describes at paragraph [0083] that the quality of service manager 408 may be used to collect and store in a database performance monitoring data related to the quality of service exhibited by the traded for bandwidth segments 112. Gros then discloses at paragraph [0084] that "the performance monitoring database may be used to generate reports which may be compared against the quality of service standards agreed to in connection with the underlying

bandwidth trades.” Therefore, Gros merely compares reports concerning already delivered data to previously agreed upon quality of service standards. Gros never checks or reviews these bandwidth segments or quality of service standards before they are made available or provided based on the supplier’s bandwidth utilization, and Gros does not ensure that these bandwidth segments or quality of service standards do not extend beyond the available bandwidth of the seller before they are made available. Gros also discloses at paragraph [0085] that “the pooling point administrator may schedule, monitor, and compare the delivered quality of service against the quality of service contracted for by the buyer and seller.” Thus, Gros fails to identify or delineate any review of any incentive data based on the bandwidth utilization of a seller before the incentive data is made available or used for routing to ensure that the incentive data does not promise bandwidth or terms that the seller will not be able to provide in the future. Accordingly, Gros fails to disclose, teach or suggest “checking, by the exchange system, whether the received incentive data provided by the supplier on the supplier list in said step of receiving offers data services extending beyond the available bandwidth of the supplier on the supplier list by reviewing the received incentive data and the tracked bandwidth utilization, and, in determining the selected supplier, ensuring that the supplier on the supplier list does not oversell the available bandwidth”, as recited by Applicants’ independent claim 1. Accordingly, even assuming that there is a reasonable rationale to combine Gros and Coyle, the resulting combination would not render the claims obvious.

Claim 1 is deemed to be patentably distinct over the cited art for at least the foregoing reasons. Claims 39 and 75 contain features akin to those discussed above with respect to claim 1 and, therefore, claims 39 and 75 are likewise deemed to be patentably distinct over the cited art for at least the same reasons discussed above with respect to claim 1. Claims 2-10, 12-37, 40-48, 52-

73, and 76-107, which variously depend from one of claims 1, 39 and 75, are deemed to be patentably distinct over the cited art for at least the same reasons discussed above with respect to claims 1, 39 and 75, as well as on their own merits.

In view of the above, Applicants request that the rejection under 35 USC § 103(a) be withdrawn.

### **CONCLUSION**

In view of the foregoing, reconsideration and withdrawal of all rejections, and allowance of all pending claims is respectfully solicited.

Should the Examiner have any comments, questions, suggestions, or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,  
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